

1

2

3

4

5

6

7

UNITED STATES DISTRICT COURT

8

DISTRICT OF NEVADA

9

* * *

11 ROBERT W. HALL, an individual, and)
12 NEVADA ENVIRONMENTAL COALITION,)
13 INC.,)

Case No.: 2:08-cv-237-RLH-RJJ

14 vs.)
15 REGIONAL TRANSPORTATION)
16 COMMISSION OF SOUTHERN NEVADA)
17 and BRUCE L. WOODBURY, it's Chairperson;))
18 CLARK COUNTY, NEVADA; NEVADA)
19 DEPARTMENT OF TRANSPORTATION and)
20 SUSAN MARTINOVICH, P.E., Director;)
21 UNITED STATES DEPARTMENT OF)
22 TRANSPORTATION and Secretary of)
23 Transportation MARY E. PETERS; FEDERAL)
24 HIGHWAY ADMINISTRATION and J.)
25 RICHARD CAPKA, Administrator of FHWA,)
26 and SUSAN KLEKAR, Division Administrator)
of FHWA Nevada Division,)
Defendants.)

O R D E R

(Motion for Preliminary Injunction #4;
Motion to Dismiss #34;
Motion to Strike #42)

Before the Court is Plaintiffs Robert W. Hall and Nevada Environmental Coalition, Inc.'s **Motion for Preliminary Injunction** (#4), filed February 28, 2008. The Court has also considered Defendants Clark County Department of Public Works, Dennis Cederburg, Regional

1 Transportation Commission of Southern Nevada and Bruce Woodbury's Opposition (#34), filed
 2 April 21, 2008, and Plaintiffs' Reply (##35, 36), filed May 5, 2008.

3 Also before the Court is Defendants' **Motion to Dismiss** (#34), filed April 21,
 4 2008. The Court has also considered Plaintiffs' Opposition (##35, 36), filed May 5, 2008, and
 5 Defendants' Reply (#41), filed May 16, 2008.

6 Also before the Court is Plaintiffs' **Motion to Strike or Dismiss** (#42), filed May
 7 16, 2008. The Court has also considered Defendants' Opposition (#43), filed June 3, 2008.

8 BACKGROUND

9 Plaintiff Robert Hall is a homeowner and resident of Sun City Summerlin and the
 10 President of Plaintiff Nevada Environmental Coalition, Inc. Plaintiffs bring this action seeking
 11 declaratory and injunctive relief to halt the construction of a traffic intersection between the 215
 12 Beltway and Lake Mead Boulevard. Plaintiffs' claims are brought under the National
 13 Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., and the Federal-Aid Highway Act
 14 ("FAHA") as amended by the Transportation Equity Act of the 21st Century, 23 U.S.C. § 128. In
 15 short, Plaintiffs' claims relate to the Defendants' decision to forgo federal funding and its
 16 concomitant requirements to prepare environmental impact studies and conduct public hearings.
 17 Because the Court finds that Plaintiffs brought their claims after the expiration of the statute of
 18 limitations, the Court dismisses this action in its entirety.

19 DISCUSSION

20 I. Motion to Dismiss, Amended Complaint, and Motion to Strike

21 After the filing of Defendants' Motion to Dismiss, Plaintiffs filed an Amended
 22 Complaint; consequently, Defendants' Motion to Dismiss is moot. Defendants' then filed their
 23 Motion to Strike or to Dismiss seeking to strike the Amended Complaint because Plaintiffs filed it
 24 without leave of the Court. Fed. R. Civ. P. 15(a)(1)(A), however, permits a party to amend its
 25 pleading once as a matter of course before being served with a responsive pleading. A motion to
 26 dismiss is not a responsive pleading, *Allwaste, Inc. v. Hecht*, 65 F.3d 1523, 1530 (9th Cir. 1995),

1 and thus Plaintiffs properly filed their Amended Complaint. In the alternative, Defendants'
 2 Motion to Strike incorporates the arguments of its original Motion to Dismiss, and as such, the
 3 Court examines Defendants' arguments in connection with the Amended Complaint.

4 **II. Statute of Limitations**

5 Plaintiffs assert their claims under the NEPA and the FAHA pursuant to the
 6 Administrative Procedures Act ("APA"), 5 U.S.C. § 500, et seq. The APA permits "[a] person
 7 suffering legal wrong because of agency action . . . [to seek] judicial review." 5 U.S.C. § 702.
 8 The statute of limitations for actions brought pursuant to the NEPA, FAHA, and APA is the six-
 9 year general statute of limitations for civil actions against the United States. *Sierra Club v.*
 10 *Penfold*, 857 F.2d 1307, 1315 (9th Cir. 1988) (applying six-year statute of limitations to NEPA
 11 action brought under the APA); *Jersey Heights Neighborhood Ass'n v. Glendening*, 174 F.3d 180,
 12 186 (4th Cir. 1999) (applying six-year limitation period to FAHA). Agency action is reviewable
 13 when it "has completed its decisionmaking process" and "the result of that process is one that will
 14 directly affect the parties." *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992).

15 Here, all six of Plaintiffs' claim in the Amended Complaint must be dismissed
 16 because they were brought after the statute of limitations period ended. Claims one through four
 17 relate to the Defendants' failure to complete and hold hearings on an adequate environmental
 18 impact study as required by the NEPA. Claim five alleges that the Defendants' failure to hold
 19 adequate public hearings violates the FAHA. Claim six accuses Defendants of violating the
 20 NEPA and APA by attempting to "de-federalize" the project. The statute of limitations on all of
 21 Plaintiffs' claims, however, began to run at least by September 3, 1997, when the United States
 22 Department of Transportation published notice in the Federal Register that it was terminating the
 23 environmental process for the Northern and Western Las Vegas Beltway. FHWA and DOT
 24 Revised Notice of Intent, 62 Fed. Reg. 46,546–47 (Sept. 3, 1997). Accordingly, the statute of
 25 limitations ran on Plaintiffs' claims on September 3, 2003. Plaintiffs did not file this action until
 26

1 February 2008. Consequently, the Court dismisses Plaintiffs' claims with prejudice because they
2 were filed over four years after the expiration of the limitations period.

3 **III. Motion for Preliminary Injunction**

4 Because the Court dismisses Plaintiffs' claims with prejudice, it also denies
5 Plaintiffs' Motion for Preliminary Injunction.

6 **CONCLUSION**

7 Accordingly, and for good cause appearing,

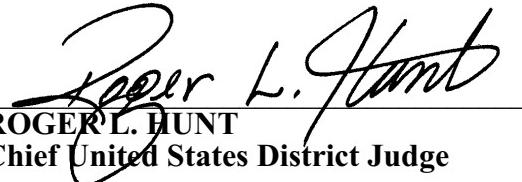
8 IT IS HEREBY ORDERED that Plaintiffs' Motion for Preliminary Injunction (#4)
9 is DENIED.

10 IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (#34) is
11 DENIED as moot.

12 IT IS FURTHER ORDERED that Defendants' Motion to Strike (#42) is
13 GRANTED. Plaintiffs' claims are dismissed with prejudice.

14 The Clerk of the Court is directed to close this case.

16 Dated: June 12, 2008.

17 
18 ROGER L. HUNT
19 Chief United States District Judge